

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:17-cv-00128-MR-WCM**

<b>HOWARD J. FOSTER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>CARROLS CORPORATION dba</b>	)	
<b>BURGER KING, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
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**THIS MATTER** is before the Court on the Plaintiff's "Motion to Show Cause Order and Response to Order of Recusal of Judge Reidinger" [Doc. 31].

On February 4, 2019, the Court entered an Order directing the Plaintiff to show cause in writing on or before February 28, 2019 why this action should not be dismissed with prejudice for his failure to engage in arbitration. The Plaintiff was specifically warned that failure to show cause in writing within the time required would result in the dismissal of this action. [Doc. 28]. The Court entered an Order dismissing this case on March 5, 2019. [Doc. 29].

On March 4, 2019, the Clerk of this Court received the present “motion” (which is more in the nature of a Response to the Show Cause Order) from the Plaintiff. The Plaintiff’s Response was not docketed until March 7, 2019, so the Court was unaware of the filing and did not address the same in its Order dismissing the case. Although it was not filed in the time required, the Court will nevertheless consider the merits of the Plaintiff’s Response.

In his Response to the Show Cause Order, the Plaintiff continues to maintain that arbitration “is not the way this claim should be [adj]udicated and that a jury trial will remedy the harm done to Plaintiff in order for Plaintiff to obtain a fair trial.” [Doc. 31 at 1]. While the Court understands that the Plaintiff does not agree with the Court’s ruling compelling the parties to arbitration, the proper procedure for the Plaintiff to challenge that ruling would be to file an appeal with the Fourth Circuit Court of Appeals at the appropriate time. The Plaintiff cannot choose to disregard an Order of the Court simply because he does not agree with it.

The Plaintiff also reasserts his contention that the undersigned has a conflict of interest in this matter. [Doc. 31 at 5]. For the reasons previously stated [Doc. 26], the Court finds no basis to recuse itself in this matter.

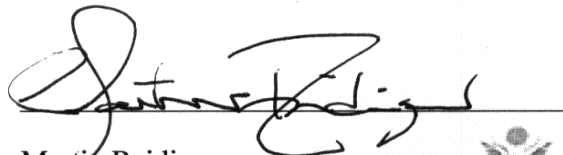
For all these reasons, the Court finds that the Plaintiff’s Response to the Show Cause Order was untimely filed and should be disregarded. Even

if the Response were considered, however, the Plaintiff has not articulated any basis why this case should not be dismissed for the Plaintiff's refusal to engage in arbitration as previously ordered.

**IT IS, THEREFORE, ORDERED** that the Plaintiff's "Motion to Show Cause Order and Response to Order of Recusal of Judge Reidinger" [Doc. 31], which the Court construes as a Response to Show Cause Order is untimely and provides no basis to re-open this action. This civil action remains **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED.**

Signed: March 8, 2019

  
Martin Reidinger  
United States District Judge

